

WILLIAM J. COLMAN

IBLA 70-370, 70-371

Decided January 10, 1973

Appeal from decisions (I 2548 and I 2551) by Idaho State Office, Bureau of Land Management, rejecting applications for phosphate permits.

Affirmed.

Phosphate Leases and Permits: Permits

An application for a phosphate prospecting permit is properly rejected upon the basis of a previous determination by the Geological Survey that the land applied for is subject to the leasing provisions of the Mineral Leasing Act, without a review of the evidence relied upon in the initial determination, where no evidence is submitted by appellant demonstrating error in that determination.

Phosphates Leases and Permits: Permits

An application for a phosphate prospecting permit is properly rejected when information is available from which the existence and workability of phosphate deposits in the lands applied for can be determined; it is not necessary that detailed information be available which permits a determination of the economic feasibility of a commercial venture.

Phosphate Leases and Permits: Generally—Phosphate Leases and Permits:

Permits—Geological Survey

When the Geological Survey has concluded from the available geological data that further exploration is, or is not, needed to determine the existence or workability of phosphate deposits within a particular area, the Board may rely upon the reports of the Survey setting forth the conclusions reached without examining the technical data upon which those conclusions were based.

Phosphate Leases and Permits: Permits

Competent evidence to establish the fact that exploration is not necessary to determine the existence or workability of a deposit may consist of proof of the existence of the minerals in adjacent land and of geological and other surrounding external conditions; it is not necessary to demonstrate the workability of the mineral deposit from an actual physical examination of the deposit in the land applied for by means of drilling or actual exploratory work on the ground.

APPEARANCES: H. Byron Mock, Esq. of Neslen and Mock, Salt Lake City, Utah, for appellant.

OPINION BY MR. FISHMAN

William J. Colman has appealed to the Director, Bureau of Land Management, 1/ from two decisions both dated May 27, 1969, in which the Bureau's Idaho Land Office rejected his applications I 2548 and I 2551 for phosphate prospecting permits on lands located in T. 9 S., R. 44 E., B.M., Idaho. 2/

The applications were filed on October 29, 1968. They were rejected by the Land Office upon the basis of information contained in a report from the Geological Survey dated May 8, 1969. The report stated:

Our records show that with the exception of the SE 1/4 SE 1/4 sec. 17, all of the subject lands were formerly applied for by subject applicant under prospecting permit application Idaho 015418, but were rejected by your Land Office decision of November 6, 1964, because of a leasing determination. Although an appeal was taken, this decision was affirmed by the Office of Appeals and Hearings, Bureau of Land Management, by decision dated June 14, 1965. When subsequently appealed to the Secretary of the Interior, the leasing determination was in

1/ The Secretary of the Interior, in the exercise of his supervisory authority, transferred jurisdiction over all appeals pending before the Director, Bureau of Land Management, to the Board of Land Appeals, effective July 1, 1970. Circular 2273, 35 F.R. 10009, 10012.

2/ Application I 2548 was for 160 acres of land in the W 1/2 N.W. 1/4 and N 1/2 SW 1/4 sec. 33. Application I 2551 was for 440 acres of land in the SE 1/4 SE 1/4 sec. 17, NW 1/4 NE 1/4, S 1/2 NE 1/4, SE 1/4 and NE 1/4 SW 1/4 sec. 20, E 1/2 NE 1/4 sec. 29.

turn upheld by Departmental decision decided November 4, 1966. [3/] Finally, in response to the appellant's petition for reconsideration, the leasing determination was further upheld for all of the lands involved in Idaho 015418, which now coincide with subject applications, by Departmental decision A-31516 (Supp.), decided September 16, 1968.

As to the SE 1/4 SE 1/4 sec. 17, the same Geological Survey records used in the original recommendation and subsequent reports connected with Idaho 015418, show that this tract is also underlain by phosphate in sufficient quality and quantity to warrant development under the leasing provision of the Act.

Considering that no new or refuting geologic or other technical information has been gained which might tend to alter the basis for the previous leasing determinations for the lands of subject applications which were involved in Idaho 015418 as explained, it is recommended that those portions be held for rejection.

It is further recommended that the SE 1/4 SE 1/4 sec. 17 also be rejected for the reasons as also explained above.

Attached to appellant's statement of reasons are two Geological Survey reports.

One report is dated October 26, 1964. It was the basis for the Land Office rejection of application I 015418. In regard to the land which is common to that application and the present applications, and in regard to most of the other land applied for by I 015418, the report stated as follows: "[O]ur records show that these lands are underlain by workable beds of phosphate and as such the lands are subject to the leasing provisions of the Act."

The other report is dated August 5, 1968. It was the basis for the Department's decision on Colman's petition for reconsideration of the Department's decision on I-015418.

At the beginning the report stated as follows: "Although a routine field inspection had been previously made in conjunction with permit application Idaho 015418, a detailed reexamination of

3/ William J. Colman, A-30516.

the area under appeal was conducted for several days by Survey personnel during July 1967."

The report then summarized the findings of the July 1967 study.

In regard to the land which is common to application I 015418 and the present applications and in regard to most of the other land applied for by I 015418, the report concluded as follows:

[N]o evidence was discovered during the field investigations which would justify a major reversal of the basic previous leasing determination concerning the Dairy Syncline structure. On the contrary, the observations made in the field support in main part the previous conclusions, drawn from the later published maps, that the area of prime concern in secs. 20 and 29, or the broad portion of the structure, is underlain by valuable minable phosphate deposits.

Accordingly the report classified these lands for leasing.

Appellant asserts that according to the Geological Survey records made available for his examination, these two reports (hereinafter referred to as the prior reports), and the field examinations and studies on which they were based, formed the "sole pertinent" basis for the Geological Survey report of May 8, 1969, and accordingly formed the "sole pertinent" basis for the decisions below.

Appellant contends that a new application requires Geological Survey to make a current classification or report based upon a new field examination or study, and it requires the Land Office to base its decision upon such report.

The same argument was discussed in J. D. Archer, 77 I.D. 124 (1970) as follows:

The main thrust of [appellant's] argument appears to be that his application cannot be rejected without a formal report, prepared in express response to his application, on the geology of the lands described in the application. * * *

* * * * *

* * * The fact is that neither the statutes * * * nor the Department's regulations * * * prescribe the manner

in which a determination as to whether or not land is subject to the issuance of a phosphate prospecting permit is to be reported. * * *

* * * * *

In this instance, the Geological Survey simply reported that it had previously found the lands described in appellant's application to be suitable for leasing, and, upon the basis of its earlier determination, it recommended the rejection of the application. The only question presented on this appeal is whether such a report is an adequate basis for action by the land office. We find that it is.

Colman further contends that the Geological Survey and Land Office in acting on the prior reports and prior studies, instead of on a new report based upon a new field examination or study, "ignored changed operating conditions and other factors pertinent to [the] workability" and "existence" of phosphate deposits on the lands applied for. In particular, he asserts that they thus ignored three allegedly pertinent and allegedly changed factors or conditions which Colman makes reference to as follows:

1. A . . . "showing in the U.S.G.S. file that no competitive interest exists for the area, presumably including the mapped outcropping."
2. "A memorandum of November 28, 1967 from the Regional Mining Supervisor to the Chief, Branch of Acting Operations, both U.S.G.S., states that Monsanto was asked to file a competitive application but declined."
3. "The Land Appeals Board can take judicial notice of conditions in the Oklahoma phosphate area whether various plants and mines have been closed down and production has altered from even the dates of the original U.S.G.S. rulings on the previous applications."

The short answer to this contention is that these three items are not pertinent to "existence" or "workability". They do not shed light on the mineral character of the lands applied for.

Although these three factors may perhaps at most tend to show that there is not available, concerning the deposits of phosphate on the land in question, such detailed information that a determination can be made with some degree of assurance that a mining operation will be an economic success, they do not tend to show that the

lands do not contain a workable quantity of phosphate. And the Department has consistently held that it is the latter and not the former which is the standard to be applied. J. D. Archer, A-30794 (October 11, 1967); Frank J. Allen, A-30641 (May 17, 1967); Atlas Corporation, 74 I.D. 76 (1967).

Thus appellant has not established that the Geological Survey or the Land Office ignored any pertinent factors or conditions in relying on the prior Geological Survey reports and studies.

Furthermore the Geological Survey in its report of May 8, 1969, stated in effect that it had not ignored any new or other pertinent factors as follows:

Considering that no new or refuting geologic or other technical information has been gained which might tend to alter the basis for the previous leasing determinations for the lands of subject applications which were involved in Idaho 015418 as explained, it is recommended that those portions be held for rejection.

In any event, the three asserted pertinent factors are insufficient to rebut the Geological Survey's determination that the lands do contain a workable quantity of phosphate.

Appellant contends that the two prior reports and the studies upon which they were based do not support the leasing classification made in the Geological Survey report of May 8, 1969, and hence they do not support the decisions appealed from. This assertion is without merit.

When the Geological Survey has concluded from the available geological data that further exploration is, or is not, needed to determine the existence or workability of phosphate deposits within a particular area, the Board may rely upon the reports of the Geological Survey setting forth the conclusions reached without examining the technical data upon which those conclusions were based. See Carl Nyman, 59 I.D. 238 (1946); Roland C. Townsend, A-30142, A-30250 (September 14, 1965).

In the absence of a clear showing that a determination was improperly made, the Board will not disturb a mineral classification or determination made by the Geological Survey. Cf. Lillie May Yates, A-26271 (February 8, 1952).

Finally, Colman contends that the two prior reports will not support the decisions below because those reports "are strictly

limited to an attempt to show "existence" and "workability" by geological inference from geological evidence which is outside of the areas now applied for.

Competent evidence to establish the fact that exploration is not necessary to determine the existence or workability of a deposit may consist of knowledge of existence of the minerals in adjacent land and of geological and other surrounding external conditions. It is not necessary, as appellant suggests, to demonstrate the workability of the mineral deposit from an actual physical examination of the deposit in the land applied for by means of drilling or actual exploratory work on the ground. Atlas Corporation, supra.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Frederick Fishman, Member

We concur.

Edward W. Stuebing, Member

Anne Poindexter Lewis, Member

